

Defendant.

"

OPINION & ORDER  
[Resolving Doc. No. [25](#)]

-1-

Case No. 1:09-CV-2793  
Gwin, J.

fourteen days of service. Id.; Fed. R. Civ. P. 72(b)(2). Failure to object within this time waives a party's right to appeal the district court's judgment. Thomas v. Arn, 474 U.S. 140, 145 (1985); United States v. Walters, 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate judge's report without review. See Thomas, 474 U.S. at 149.

In this case, neither party has objected to the Magistrate Judge's recommendation. Indeed, the Defendant responded to the Report and Recommendation stating that he would not file an objection. [Doc. 26.]

Moreover, having conducted its own review of the record, the Court agrees with the recommendation of Magistrate Judge Armstrong. In deeming Figueroa literate, the Administrative Law Judge (ALJ) did not ask whether Figueroa could read, write, speak, or otherwise communicate in English. [Doc. 25 at 15.] The ALJ then used this deficient literacy determination to conclude that a significant number of jobs in the national economy were available to Figueroa. [Doc. 25 at 12.]

Accordingly, this Court finds remand for evidentiary development on the issue of Figueroa's literacy appropriate.

The Court **ADOPTS** in whole Magistrate Judge Armstrong's Report and Recommendation and incorporates it fully herein by reference, and **REMANDS** the case to the Social Security Commissioner.

IT IS SO ORDERED.

Dated: February 11, 2011

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE